

BOARD OF APPEALS CASE NO. 5193

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BEFORE THE

APPLICANT: Grant E. Thompson

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ZONING HEARING EXAMINER

**REQUEST: Variance to create 2 lots without the
required building width, side and front yard setbacks;
3844 & 3846 Rock Run Road, Havre de Grace**

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OF HARFORD COUNTY

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Hearing Advertised

HEARING DATE: December 19, 2001

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Aegis: 10/24/01 & 10/31/01

Record: 10/25/01 & 11/2/01

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Grant E. Thompson, is requesting a variance pursuant to Section 267-33C, Table II of the Harford County Code, to subdivide 2 lots with less than the required 200 foot lot width, less than the required 40 foot side yard setback on existing dwellings, and less than the required 50 foot front yard setback on existing dwellings in an Agricultural District.

The subject parcel is located at 3844 and 3846 Rock Run Road, Havre de Grace, Maryland 21078, in the Second Election District, and is more particularly identified on Tax Map 36, Grid 3E, Parcel 48. The parcel contains approximately 4.10 total acres (two lots each 2.05 acres).

Mr. L. Gerald Wolff a professional land surveyor, and president of the firm, L.G. Wolff, Associates, Inc., appeared, and was qualified and admitted as an expert witness. Mr. Wolf testified that the subject property is owned by the Applicant, Grant E. Thompson. He stated that he is familiar with the Department of Planning and Zoning's Staff Report, and that he has no additions or corrections to that document. Mr. Wolff described the subject property as an irregularly shaped parcel, which is part of a larger 48 acre parcel fronting on Rock Run Road. The lot contains two existing dwellings, constructed side by side on Rock Run Road, on a very narrow portion of the property. Both of the dwellings have existed for over fifty years. One of the structures was constructed during World War II, and the other in the early 1950's.

The witness introduced Applicant's Exhibit 1 into evidence. This exhibit is a copy of the site plan for the property, which shows the existing dwellings and outbuildings shaded

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in red, and the relevant existing setback lines highlighted in yellow. The witness explained the setback lines shown on Applicant's Exhibit 1 as follows. Neither lot has sufficient width to meet the required 200 foot minimum lot width or the required 40 foot side yard setback requirements. Lot 2 is 64 feet wide at its narrowest point. The distances between the property line and the house are 17 feet on the east, and 16 feet on the west. Lot 3 is 154 feet wide at its narrowest point, and the existing dwelling is located 19 feet from the eastern property line. In addition, neither dwelling is situated far enough back from Rock Run Road to meet the required 50 foot front yard setback. The dwelling on lot 2 is located 46 feet from the right of way line, and the dwelling on lot 3 is located 33 feet from the right of way line. Mr. Wolff further testified that both lots comply with the 2 acre minimum lot size requirements for an Agricultural District.

Finally, Mr. Wolff testified that he does not believe that granting the requested variances would have any adverse impact on adjoining properties. There will be no new construction, and the property will not change in any way, except for the establishment of dividing lines, which will enable two existing dwellings to be located on two separate lots.

Mr. Anthony McClune appeared and testified on behalf of the Department of Planning and Zoning. Mr. McClune testified that his Department investigated the requested variance, and made the following findings of fact. Because of the configuration and location of the existing dwellings, granting the requested variance is the only way to separate the dwellings onto two separate lots.

The Department of Planning and Zoning recommended approval of the requested variance in its Staff Report dated December 5, 2001, subject to the Applicant submitting a detailed preliminary plan for review and approval by that Department, and the Applicant submitting a final plat to the Department for approval and recordation. The Staff Report also indicates that both of the existing dwellings predate any zoning in Harford County, and that each has its own 2 car garage, blacktop drive and water system.

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

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The Applicant, Grant E. Thompson, is requesting a variance pursuant to Section 267-33C, Table II of the Harford County Code to subdivide 2 lots with less than the required 200 foot lot width, less than the required 40 foot side yard setback on existing dwellings, and less than the required 50 foot front yard setback on existing dwellings in an Agricultural District.

Section 267-33C, Table II of the Harford County Code provides that lots in an Agricultural District, recorded after February 8, 1977, must have a minimum lot width of 200 feet, a minimum front yard depth of 50 feet, and a minimum side yard depth of 40 feet.

The Harford County Code allows the granting of variances stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals established the following two part test for determining whether a variance should be granted. First, it must be determined whether the property for which the variance is being requested is unique. In order for a lot to be unique, there must be a peculiar characteristic or unusual circumstance, relating only to the subject parcel, which causes the zoning ordinance to impact more severely on that property than on surrounding lots. If it is determined that the subject property is unique, the hearing examiner may proceed to the second prong of the test.

The second prong involves a determination as to whether strict enforcement of the zoning ordinance would result in practical difficulty or unreasonable hardship to the property owner. Cromwell v. Ward, 102 Md. App. 691, 721 (1995).

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The Hearing Examiner finds that the subject property is unique. The property contains two dwellings, each of which predate the existence of any zoning in Harford County. There was no opposition testimony introduced to contradict this finding. Thus, the first element of the Cromwell test has been met.

It must next be decided whether denial of the requested variances would create practical difficulty, or an unreasonable hardship for the Applicant. The Hearing Officer finds that such a denial would result in both practical difficulty and unreasonable hardship for the Applicant in this case. Unless the requested variances are granted, the existing dwellings cannot be located on separate lots. Denial of the subject requests would therefore create a hardship for the Applicant in the use and disposition of his property.

Lastly, the Hearing Examiner finds that granting the requested variances will not have an adverse impact on, or be substantially detrimental to, adjacent properties. Nor will it materially impair the purpose of the Code or the public interest. There will be no new construction, and the granting of the requested variances will not change the property in any way other than to establish dividing lines, enabling two existing dwellings to be located on two separate lots.

The Hearing Examiner recommends approval of the Applicant's request subject to the following conditions:

1. The Applicant shall submit a detailed preliminary plan to be reviewed and approved by the Department of Planning and Zoning.
2. The Applicant shall submit a final plat to the Department of Planning and Zoning for approval and recordation.

Date JANUARY 23, 2002

Rebecca A. Bryant
Zoning Hearing Examiner